



Senate

General Assembly

File No. 175

February Session, 2008

Substitute Senate Bill No. 481

Senate, March 26, 2008

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING UNINSURED MOTORISTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-336 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) (1) Each automobile liability insurance policy shall provide
4 insurance, herein called uninsured and underinsured motorist
5 coverage, in accordance with the regulations adopted pursuant to
6 section 38a-334, with limits for bodily injury or death not less than
7 those specified in subsection (a) of section 14-112, for the protection of
8 persons insured thereunder who are legally entitled to recover
9 damages from owners or operators of uninsured motor vehicles and
10 underinsured motor vehicles and insured motor vehicles, the insurer
11 of which becomes insolvent prior to payment of such damages,
12 because of bodily injury, including death resulting therefrom. Each
13 insurer licensed to write automobile liability insurance in this state
14 shall provide uninsured and underinsured motorists coverage with
15 limits requested by any named insured upon payment of the

16 appropriate premium, provided each such insurer shall offer such
17 coverage with limits that are twice the limits of the bodily injury
18 coverage of the policy issued to the named insured. The insured's
19 selection of uninsured and underinsured motorist coverage shall apply
20 to all subsequent renewals of coverage and to all policies or
21 endorsements [which] that extend, change, supersede or replace an
22 existing policy issued to the named insured, unless changed in writing
23 by any named insured. No insurer shall be required to provide
24 uninsured and underinsured motorist coverage to (A) a named
25 insured or relatives residing in his household when occupying, or
26 struck as a pedestrian by, an uninsured or underinsured motor vehicle
27 or a motorcycle that is owned by the named insured, or (B) any
28 insured occupying an uninsured or underinsured motor vehicle or
29 motorcycle that is owned by such insured.

30 (2) Notwithstanding any provision of this section to the contrary,
31 each automobile liability insurance policy issued or renewed on and
32 after January 1, 1994, shall provide uninsured and underinsured
33 motorist coverage with limits for bodily injury and death equal to
34 those purchased to protect against loss resulting from the liability
35 imposed by law unless any named insured requests in writing a lesser
36 amount, but not less than the limits specified in subsection (a) of
37 section 14-112. Such written request shall apply to all subsequent
38 renewals of coverage and to all policies or endorsements which extend,
39 change, supersede or replace an existing policy issued to the named
40 insured, unless changed in writing by any named insured. No such
41 written request for a lesser amount shall be effective unless any named
42 insured has signed an informed consent form which shall contain: (A)
43 An explanation of uninsured and underinsured motorist insurance
44 approved by the commissioner; (B) a list of uninsured and
45 underinsured motorist coverage options available from the insurer;
46 and (C) the premium cost for each of the coverage options available
47 from the insurer. Such informed consent form shall contain a heading
48 in twelve-point type and shall state: "WHEN YOU SIGN THIS FORM,
49 YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE
50 ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE

51 COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU
52 ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT
53 YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE
54 AGENT OR ANOTHER QUALIFIED ADVISER."

55 (b) An insurance company shall be obligated to make payment to its
56 insured up to the limits of the policy's uninsured and underinsured
57 motorist coverage after the limits of liability under all bodily injury
58 liability bonds or insurance policies applicable at the time of the
59 accident have been exhausted by payment of judgments or settlements,
60 but in no event shall the total amount of recovery from all policies,
61 including any amount recovered under the insured's uninsured and
62 underinsured motorist coverage, exceed the limits of the insured's
63 uninsured and underinsured motorist coverage. In no event shall there
64 be any reduction of uninsured or underinsured motorist coverage
65 limits or benefits payable for amounts received by the insured for
66 Social Security disability benefits paid or payable pursuant to the
67 Social Security Act, 42 USC Section 301, et seq. The limitation on the
68 total amount of recovery from all policies shall not apply to
69 underinsured motorist conversion coverage purchased pursuant to
70 section 38a-336a.

71 (c) Each automobile liability insurance policy issued on or after
72 October 1, 1971, [which] that contains a provision for binding
73 arbitration shall include a provision for final determination of
74 insurance coverage in such arbitration proceeding. With respect to any
75 claim submitted to arbitration on or after October 1, 1983, the
76 arbitration proceeding shall be conducted by a single arbitrator if the
77 amount in demand is forty thousand dollars or less or by a panel of
78 three arbitrators if the amount in demand is more than forty thousand
79 dollars.

80 (d) Regardless of the number of policies issued, vehicles or
81 premiums shown on a policy, premiums paid, persons covered,
82 vehicles involved in an accident, or claims made, in no event shall the
83 limit of liability for uninsured and underinsured motorist coverage

84 applicable to two or more motor vehicles covered under the same or
85 separate policies be added together to determine the limit of liability
86 for such coverage available to an injured person or persons for any one
87 accident. If a person insured for uninsured and underinsured motorist
88 coverage is an occupant of a nonowned vehicle covered by a policy
89 also providing uninsured and underinsured motorist coverage, the
90 coverage of the occupied vehicle shall be primary and any coverage for
91 which such person is a named insured shall be secondary. All other
92 applicable policies shall be excess. The total amount of uninsured and
93 underinsured motorist coverage recoverable is limited to the highest
94 amount recoverable under the primary policy, the secondary policy or
95 any one of the excess policies. The amount paid under the excess
96 policies shall be apportioned in accordance with the proportion that
97 the limits of each excess policy bear to the total limits of the excess
98 policies. If any person insured for uninsured and underinsured
99 motorist coverage is an occupant of an owned vehicle, the uninsured
100 and underinsured motorist coverage afforded by the policy covering
101 the vehicle occupied at the time of the accident shall be the only
102 uninsured and underinsured motorist coverage available.

103 (e) For the purposes of this section, an "underinsured motor vehicle"
104 means a motor vehicle with respect to which the sum of the limits of
105 liability under all bodily injury liability bonds and insurance policies
106 applicable at the time of the accident is less than the applicable limits
107 of liability under the uninsured motorist portion of the policy against
108 which claim is made under subsection (b) of this section.

109 (f) Notwithstanding subsection (a) of section 31-284, an employee of
110 a named insured injured while occupying a covered motor vehicle in
111 the course of employment shall be covered by such insured's otherwise
112 applicable uninsured and underinsured motorist coverage.

113 (g) (1) No insurance company doing business in this state [may]
114 shall limit the time within which any suit may be brought against it or
115 any demand for arbitration on a claim may be made on the uninsured
116 or underinsured motorist provisions of an automobile liability

117 insurance policy to a period of less than three years from the date of
118 accident, provided, in the case of an underinsured motorist claim the
119 insured may toll any applicable limitation period (A) by notifying such
120 insurer prior to the expiration of the applicable limitation period, in
121 writing, of any claim which the insured may have for underinsured
122 motorist benefits, and (B) by commencing suit or demanding
123 arbitration under the terms of the policy not more than one hundred
124 eighty days from the date of exhaustion of the limits of liability under
125 all automobile bodily injury liability bonds or automobile insurance
126 policies applicable at the time of the accident by settlements or final
127 judgments after any appeals.

128 (2) Notwithstanding the provisions of subdivision (1) of this
129 subsection, in the case of an uninsured motorist claim, if the motor
130 vehicle of a tortfeasor is an uninsured motor vehicle because the
131 automobile liability insurance company of such tortfeasor becomes
132 insolvent or denies coverage, no insurance company doing business in
133 this state [may] shall limit the time within which any suit may be
134 brought against it or any demand for arbitration on a claim may be
135 made on the uninsured motorist provisions of an automobile liability
136 insurance policy to a period of less than one year from the date of
137 receipt by the insured of written notice of such insolvency of, or denial
138 of coverage by, such automobile liability insurance company.

139 (3) Notwithstanding the provisions of this section, in the case of an
140 uninsured motorist claim, the insured under whose policy such claim
141 is made shall not be required to pay any copayment or deductible if
142 the owner or operator of the uninsured motor vehicle pertaining to
143 such claim is the tortfeasor. An insurer shall have the right of
144 subrogation against the owner or operator of the uninsured motor
145 vehicle to collect any copayment or deductible it may otherwise have
146 received from the insured, in addition to any other moneys, damages
147 or remedies it is entitled to seek by law or by regulation.

148 Sec. 2. Section 38a-686 of the general statutes is repealed and the
149 following is substituted in lieu thereof (*Effective October 1, 2008*):

150 The following standards, methods and criteria shall apply to the
151 making and use of rates pertaining to personal risk insurance:

152 (a) Rates shall not be excessive, inadequate or unfairly
153 discriminatory.

154 (1) A rate in a competitive market is not excessive. A rate in a
155 noncompetitive market including a rate for insurance provided
156 pursuant to sections 38a-328, 38a-329 and 38a-670 is excessive if it is
157 unreasonably high for the insurance provided.

158 (2) No rate shall be held inadequate unless (A) it is unreasonably
159 low for the insurance provided, and (B) continued use of it would
160 endanger solvency of the insurer, or unless (C) such rate is
161 unreasonably low for the insurance provided and the use of such rate
162 by the insurer using same has, or, if continued will have, the effect of
163 destroying competition or creating a monopoly.

164 (b) In determining whether rates comply with the excessiveness
165 standard in a noncompetitive market under subdivision (1) of
166 subsection (a) of this section, the inadequacy standard under
167 subdivision (2) of subsection (a) of this section and the requirement
168 that rates not be unfairly discriminatory, the following criteria shall
169 apply:

170 (1) Consideration may be given, to the extent possible, to past and
171 prospective loss experience within and outside this state, to
172 conflagration and catastrophe hazards, to a reasonable margin for
173 underwriting profit and contingencies, to past and prospective
174 expenses both country-wide and those specially applicable to this
175 state, to investment income earned or realized by insurers both from
176 their unearned premium and loss reserve funds, and to all other
177 factors, including judgment factors, deemed relevant within and
178 outside this state and in the case of fire insurance rates, consideration
179 may be given to the experience of the fire insurance business during
180 the most recent five-year period for which such experience is available.
181 Consideration may be given in the making and use of rates to

182 dividends, savings or unabsorbed premium deposits allowed or
183 returned by insurers to their policyholders, members or subscribers.

184 (2) The systems of expense provisions included in the rates for use
185 by an insurer or group of insurers may differ from those of other
186 insurers or groups of insurers to reflect the operating methods of any
187 such insurer or group with respect to any kind of insurance, or with
188 respect to any subdivision or combination thereof.

189 (3) Risks may be grouped by classifications for the establishment of
190 rates and minimum premiums, provided that with respect to private
191 passenger nonfleet automobile insurance, any change in territorial
192 classifications shall be subject to prior approval by the Insurance
193 Commissioner, and provided no surcharge on any motor vehicle
194 liability or physical damage insurance premium may be assigned for
195 (A) any accident involving only property damage of one thousand
196 dollars or less, or (B) the first accident involving only property damage
197 of more than one thousand dollars which would otherwise result in a
198 surcharge to the policy of the insured, within the experience period set
199 forth in the insurer's safe driver classification plan, or (C) any violation
200 of section 14-219 unless such violation results in the suspension or
201 revocation of the operator's license under section 14-111b, or (D) less
202 than three violations of section 14-218a within any one-year period, or
203 (E) any accident caused by an operator other than the named insured,
204 a relative residing in the named insured's household, or a person who
205 customarily operates the insured vehicle, or (F) the first or second
206 accident within the current experience period in relation to which the
207 insured was not convicted of a moving traffic violation and was not at
208 fault, or (G) any motor vehicle infraction. Subparagraph (G) of this
209 subdivision shall not be applicable to any plan established pursuant to
210 section 38a-329. Classification rates may be modified to produce rates
211 for individual risks in accordance with rating plans which provide for
212 recognition of variations in hazards or expense provisions or both.
213 Such rating plans may include application of the judgment of the
214 insurer and may measure any differences among risks that can be
215 demonstrated to have a probable effect upon losses or expenses.

216 (4) Each rating plan shall establish appropriate eligibility criteria for
217 determining significant risks which are to qualify under the plan.
218 Rating plans which comply with the provisions of this subdivision
219 shall be deemed to produce rates which are not unfairly
220 discriminatory.

221 (c) Notwithstanding the provisions of subsections (a) and (b) of this
222 section, no rate shall include any adjustment designed to recover
223 underwriting or operating losses incurred out-of-state, or the loss of
224 any copayment or deductible pursuant to subdivision (3) of subsection
225 (g) of section 38a-336, as amended by this act.

226 (d) The commissioner may adopt regulations, in accordance with
227 the provisions of chapter 54, [concerning rating plans] to effectuate the
228 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	38a-336
Sec. 2	October 1, 2008	38a-686

Section 1	October 1, 2008	38a-336
Sec. 2	October 1, 2008	38a-686

Statement of Legislative Commissioners:

Technical change made for consistency.

INS *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill has no fiscal impact on the Department of Insurance.

This bill exempts an insured person making an uninsured motorist claim from being required to pay a co-payment or deductible when the uninsured motorist was at fault. It also allows the insurer of the claimant to collect from the uninsured motorist the amount of the co-payment or deductible it would otherwise have received from the insured, in addition to any other remedies provided by law or regulation.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 481*****AN ACT CONCERNING UNINSURED MOTORISTS.*****SUMMARY:**

This bill:

1. waives auto insurance copayments or deductibles related to an insured's claim for injuries or damages resulting from an accident in which an uninsured driver was at fault;
2. allows an insurer to collect any waived copayment or deductible amount from the at-fault uninsured driver instead, along with any other damages or remedies the law permits it to pursue; and
3. prohibits insurers from adjusting an insured's auto insurance premium rate to recover any lost copayment or deductible because it was waived as required.

EFFECTIVE DATE: October 1, 2008

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/11/2008)